

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUL 31 2012

JAMES R. LUNDEN, CLERK
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

CHARLES T. WEEMS,
Defendant.

No. CR-07-2078-FVS

ORDER DISMISSING THE
INDICTMENT WITHOUT
PREJUDICE

THIS MATTER came before the Court on July 31, 2012, based upon the "Defendant's Motion to Dismiss for Speedy Trial Violation." He was represented by Rick L. Hoffman. The United States was represented by Alexander C. Ekstrom.

BACKGROUND

The following is a partial chronology of the case:

03/01/07: Law enforcement officers stopped the defendant's pickup and searched it without a warrant. They allegedly discovered a submachine gun and other contraband.

06/13/07: An indictment was filed charging the defendant with one count of possession of an unregistered firearm, 18 U.S.C. § 5861(d), one count of possession of a firearm in furtherance of a drug

1 trafficking crime, 18 U.S.C. § 924(c)(1)(A), and
2 one count of felon in possession of a firearm, 18
3 U.S.C. § 922(g)(1).

4 06/21/07: The United States filed a "Motion for Detention."

5 06/21/07: The defendant was arraigned.

6 06/21/07: The United States' detention motion was granted.

7 07/09/07: The defendant filed a "Motion to Review Detention
8 Order." This was docketed as ECF No. 17.

9 07/19/07: The defendant filed a "Motion to Continue."

10 08/08/07: The Court continued trial until October 22, 2007.

11 08/30/07: A magistrate judge entered an "Order Setting
12 Conditions of Release." This resolved ECF No. 17.

13 09/13/07: The defendant filed a "Second Motion to Continue."

14 10/11/07: The Court continued trial until February 4, 2008.

15 01/07/08: The defendant filed a "Motion to Continue Pretrial
16 and Trial."

17 01/24/08: The Court continued trial until June 9, 2008.

18 03/12/08: A warrant was issued for the defendant's arrest
19 based, in part, upon probable cause to believe he
20 had absconded.

21 07/22/10: The defendant was arrested in the Southern
22 District of Georgia.

23 07/26/10: A magistrate judge in the Southern District of
24 Georgia entered an order that is entitled
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1 "Commitment to Another District."

2 08/20/10: The United States filed a "Motion for Detention"
3 in the Eastern District of Washington.

4 08/23/10: A magistrate judge granted the United States'
5 detention motion.

6 09/13/10: The defendant filed a "Motion to Continue Pretrial
7 and Trial."

8 09/28/10: The Court continued trial until December 6, 2010.

9 10/19/10: The defendant filed a "Motion to Continue Pretrial
10 and Trial."

11 11/24/10: The defendant filed "Defendant's Motion to
12 Suppress Evidence."

13 11/24/10: The Court continued trial until December 13, 2010.

14 12/06/10: The Court orally granted the suppression motion.

15 12/21/10: The Court entered a written order granting
16 suppression and staying proceedings pending an
17 appeal by the United States.

18 01/18/11: The United States filed a notice of appeal.

19 12/21/11: The Ninth Circuit reversed the suppression order.

20 01/12/12: The mandate was issued.

21 05/01/12: The defendant filed a "Motion to Continue."

22 05/18/12: The Court continued trial until August 20, 2012.

23 07/06/12: The defendant filed "Defendant's Motion to Dismiss
24 for Speedy Trial Violation."

1 18 U.S.C. § 3161

2 The Speedy Trial Act establishes a deadline, "[T]he trial of a
3 defendant . . . shall commence within seventy days from the filing
4 date . . . of the . . . indictment, or from the date the defendant has
5 appeared before a judicial officer . . ., whichever date last occurs."

6 18 U.S.C. § 3161(c)(1). The indictment was filed on June 13, 2007,
7 but the defendant did not appear before a judicial officer until June
8 21, 2007. On the 21st, the United States filed a detention motion. A
9 magistrate judge granted the United States' detention motion on the
10 21st. Thus, the 21st is excluded from the computation of the 70-day
11 speedy trial deadline. 18 U.S.C. § 3161(h)(1)(D) ("delay resulting
12 from any pretrial motion"). The speedy trial clock began to run on
13 June 22, 2007. The clock continued to run through July 8, 2007. The
14 clock stopped on July 9, 2007, when the defendant filed a detention-
15 review motion. **Seventeen unexcludable days elapsed during the period**
16 **from June 22 through July 8.** The clock remained stopped for a long
17 period of time. The clock had not restarted when the defendant
18 absconded during March of 2008. The clock did not restart while he
19 was absent. 18 U.S.C. § 3161(h)(3)(A) ("[a]ny period of delay
20 resulting from the absence . . . of the defendant"). The defendant
21 was arrested in the Southern District of Georgia on July 22, 2010.
22 The clock arguably restarted on that date. If it did, it stopped on
23 July 26, 2010, when a magistrate judge in the Southern District of
24 Georgia entered an order that is entitled "Commitment to Another
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1 District." If the clock restarted on July 22nd, then four
2 unexcludable days elapsed during the period from July 22nd through
3 July 25th. Once the magistrate judge entered the order, the United
4 States had ten days to transport the defendant to the Eastern District
5 of Washington. 18 U.S.C. § 3161(h)(1)(F). Consequently, the clock
6 restarted on August 6th. It stopped on August 20, 2010, when the
7 United States filed a detention motion. **Fourteen unexcludable days**
8 **elapsed during the period from August 6th through August 19th.** A
9 magistrate judge granted the United States' motion on August 23, 2010.
10 The clock restarted on August 24, 2010. It stopped on September 13,
11 2010, when the defendant filed a motion requesting a continuance.
12 **Twenty unexcludable days elapsed during the period from August 24th**
13 **through September 12th.** The clock remained stopped until mandate was
14 issued on January 12, 2012. The clock restarted the next day. See
15 *United States v. Pete*, 525 F.3d 844, 853 (9th Cir.2008). It ran until
16 May 1, 2012, when the defendant filed a motion requesting a
17 continuance. **One hundred nine unexcludable days elapsed during the**
18 **period from January 13th through April 30th.** In sum, a total of 164
19 unexcludable days had elapsed by May 1, 2012. As a result, the
20 defendant's statutory right to a speedy trial has been violated. The
21 indictment must be dismissed. 18 U.S.C. § 3162(a)(2). The only issue
22 is whether it must be dismissed with prejudice.
23
24

25 A district court must consider a number of factors in deciding
26 whether to dismiss the indictment with prejudice. Three factors are

1 set forth explicitly in 18 U.S.C. § 3162(a)(2). They are "the
2 seriousness of the offense; the facts and circumstances of the case
3 which led to the dismissal; and the impact of a reprosecution on the
4 administration of this chapter and on the administration of justice."
5 *Id.* These three factors are not necessarily the only relevant
6 factors. A district court also should consider whether the defendant
7 will suffer prejudice. See *United States v. Alvarez-Perez*, 629 F.3d
8 1053, 1062 (9th Cir.2010).
9

10 **RULING**

11 A. Seriousness

12 One factor the Court must consider is the seriousness of the
13 crime. The United States alleges the defendant knowingly possessed an
14 unregistered machine gun. If the United States can prove this
15 allegation, the defendant's violations of federal firearms statutes
16 are more serious than the typical firearms violations.
17

18 B. Facts and Circumstances

19 A second factor the Court must consider is the facts and
20 circumstances that are leading to dismissal. The Court begins with
21 "the sheer length of the period involved." *Alvarez-Perez*, 629 F.3d at
22 1063 (internal punctuation and citation omitted). This case has been
23 pending for five years. The principal reason for the delay is the
24 defendant's behavior. He requested several continuances and then
25 absconded. Not only did he abscond, but he fled to the State of
26 Georgia. He was not arrested until July of 2010. Given the location

1 of his arrest, proceedings were delayed by several additional weeks
2 because the United States Marshals Service had to transport him across
3 the county. As it turned out, the delay between March of 2008 and
4 August of 2010 worked to his advantage. On April 21, 2009, the
5 Supreme Court decided *Arizona v. Gant*, 556 U.S. 332, 129 S.Ct. 1710,
6 173 L.Ed.2d 485 (2009) (hereinafter "*Gant*"). After his 2010 arrest,
7 the defendant moved to suppress based upon *Gant*. This Court granted
8 the motion; a ruling the United States appealed. During December of
9 2011, the Ninth Circuit reversed the Court's suppression order.
10
11 Mandate issued on January 12, 2012. At that point, at least 14 days
12 remained on the defendant's speedy trial clock. Had the Court
13 scheduled trial during that period, the defendant would have had to
14 decide whether to go to trial or move for a continuance. The
15 defendant did not have to make that choice because the Court neglected
16 to examine the speedy trial clock on January 12, 2012. Neither the
17 United States nor the defendant reminded the Court to do so before the
18 clock expired. It was not until April of 2012 that his attorney
19 requested action on his case. By then, the defendant's right to a
20 speedy trial had been violated. And the violation is not trivial. We
21 are at least 90 days beyond the deadline for bringing him to trial.
22

23 C. Impact of Reprosecution

24 A third factor the Court must consider is the impact of
25 reprosecution upon the administration of the Speedy Trial Act and upon
26 the administration of justice. Here, there was no fundamental

1 misunderstanding regarding the requirements of the Speedy Trial Act.
2 Cf. *United States v. Clymer*, 25 F.3d 824, 832 (9th Cir.1994) ("the
3 Speedy Trial Act violation here resulted from a basic misunderstanding
4 of the appropriate use of the 'ends of justice' exclusion"). Nor was
5 the delay a function of a "culture of poor compliance." *United States*
6 *v. Medina*, 524 F.3d 974, 988 (9th Cir.2008). This Court takes pride
7 in its record of compliance with the requirements of the Speedy Trial
8 Act. Rather, the proximate cause of the speedy trial violation was
9 the Court's failure to examine the defendant's speedy trial clock when
10 mandate was issued.

12 D. Prejudice

13 A fourth factor the Court must consider is the risk of prejudice
14 to the defendant in the event he is re-indicted. As he points out,
15 the charges against him are based upon evidence that law enforcement
16 officers seized from his pickup during the course of a warrantless
17 search on March 1, 2007. He has moved to suppress the evidence in
18 question. Whether he will prevail depends, in large part, upon the
19 officers' credibility. The defendant suspects their memories have
20 dimmed over the last five years. He is concerned he will not be able
21 to impeach their accounts of what occurred because of their inability
22 to remember critical details. One thing is certain. Five years is a
23 long time to remember the details of a search. Indeed, it would be
24 surprising if the officers' memories of the search have not faded.
25 However, this circumstance may benefit the defendant. It is the
26

1 United States that bears the burden of proving the officers' actions
2 were reasonable within the meaning of the Fourth Amendment. If the
3 officers cannot remember what occurred, or if they cannot remember the
4 event very clearly, the United States may be unable to satisfy its
5 burden. Time will tell. However, at this juncture, the Court cannot
6 say the defendant's ability to defend himself has been compromised by
7 the speedy trial violation.
8

9 E. Balancing of Factors

10 The defendant requested three continuances during 2007 and 2008.
11 He absconded during 2008, and when the Marshals Service returned him
12 to this district, he requested two continuances during the autumn of
13 2010. The Court granted the continuances because it accepted his
14 representations that his attorneys needed additional time to prepare.
15 Given the defendant's requests for continuances, and given his
16 decision to abscond, a case that could have been resolved during the
17 summer of 2007 was still unresolved on November 1, 2010. Three years
18 is a long time; but the defendant appears to have profited from the
19 delay. The Supreme Court decided *Gant* on April 21, 2009. Had the
20 defendant been convicted during the summer of 2007, it is unlikely his
21 case would have been on direct appeal when *Gant* was decided. Still,
22 that is not what occurred. Resolution of the defendant's case was
23 delayed. The delay gave him an opportunity to take advantage of *Gant*.
24 The Court granted his motion to suppress, but the Ninth Circuit
25 reversed the order and remanded his case for further proceedings.
26

1 When mandate issued, it was the Court's duty to ensure the defendant
2 received a trial before the speedy trial clock expired. The Court did
3 not fulfill its responsibility in that regard. The indictment must be
4 dismissed. Nevertheless, dismissing the indictment with prejudice
5 would grant the defendant a windfall he does not deserve given his
6 behavior in this case.


7 **IT IS HEREBY ORDERED:**

8
9 1. The "Defendant's Motion to Dismiss for Speedy Trial Violation"
10 (ECF No. 162) is granted in part. The indictment is dismissed without
11 prejudice.

12 2. The "Defendant's Second Motion to Suppress Evidence" (ECF 165)
13 is denied with leave to resubmit in the event a grand jury returns a
14 new indictment.

15 **IT IS SO ORDERED.** The District Court Executive is hereby
16 directed to enter this order, furnish copies to counsel, and close the
17 case.

18 DATED this 31st day of July, 2012.

19
20 
21 Fred Van Sickle
22 Senior United States District Judge
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